

G 202/2020 (and others): limitation of compensation for loss of earnings is in compliance with the constitution

The Covid-19-Measures-Act of March 2020 does not provide a right to compensation for companies which are affected by a prohibition of entry for permanent establishments. According to the CC, the non-existent right to compensation infringes neither the fundamental right to integrity of property nor the principle of equality: it is true that a prohibition of entry for establishments in its effect for the companies concerned is a prohibition on the operation and thus constitutes a significant interference with the fundamental right of ownership. However, this ban was and is embedded in a comprehensive package of measures and rescue measures. The aim is to mitigate the economic impact of the prohibition on the companies concerned or, in general, from the consequences of the Covid-19 pandemic. In particular, the companies concerned were or are entitled to aid for short-time work and other financial support.

With regard to these supportive measures, the prohibition of entry does not constitute a disproportionate interference with the fundamental right to property integrity. A claim to compensation for all companies covered by the prohibition of entry cannot be derived from the fundamental right, according to the CC:

‘In this assessment, it is also particularly important that, apart from the exceptions provided for in § 2 Covid-19-Measures-Regulation, all commercial and service undertakings were affected by the prohibition of entry (and the resulting adverse consequences). Especially in the case of restrictions on ownership, which were considered necessary to avoid further spread of the disease in order to avoid further spread of the disease, the fundamental right to the integrity of the property – in the present constellation – cannot be deduced from the fundamental right to the integrity of the property – in the present constellation – in the present constellation.’

With regard to the above-mentioned aid measures, the CC holds: ‘With regard to prohibitions of entry from establishments ordered on account of Covid-19 on the basis of § 1 Covid-19 Measures Act, compensation for the resulting loss of earnings pursuant to § 32 Epidemiegesetz 1950 (1950 Epidemic Act) is not eligible. The legislator ruled out the application of the provisions of the 1950 Epidemic Act on the closure of permanent establishments concerning measures under § 1 Covid-19 Measures Act. With the creation of the Covid-19 Measures Act, the legislator obviously pursued (also) the concern to exclude compensation claims in the event of closure of permanent establishments under the Epidemic Act 1950, specifically pursuant to § 20 and § 32 1950 Epidemic Act.’

Furthermore, the CC notes that the above-mentioned aid measures, such as short-time work and other financial support, must be granted to companies in accordance with the same criteria and on the basis of factual criteria:

‘In this context, it should be borne in mind in particular that the services provided by the legislator (partially) are provided within the framework of the private sector administration (Art. 17 of the Austrian Constitution). From the fiscal system of fundamental rights follows, that those concerned have a legally enforceable right to be granted such promotions in a manner consistent with equality and on the basis of factual criteria as well as other promoters.’

Nor does it contravene the principle of equality that the Covid-19-Measures-Act does not provide any right to compensation in the event of a ban on admission, while the Epidemic Act in 1950 grants a right to compensation for the loss of earnings in the event of the closure of an establishment.

These regulations are not comparable to each other because the legislator, with the 1950 Epidemic Act, had in mind only the closure of individual businesses, but not large-scale closures as a result of the Covid-19 measures.

Moreover, the CC assumes that the legislator will have further scope for legislative action to combat the economic consequences of the Covid-19 pandemic. If the legislator has made the decision to embed the prohibition of entry into its own bailout package, which has essentially the same objective as claims for compensation for the loss of earnings under the Epidemic Act 1950, it must not be opposed from the standpoint of the principle of equality.